



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3501 FAX (603) 271-6683



Alphonse O. Plourde
RR 1, Box 323
Gilmanton, NH 03237

RE: Map#42, Lot#14
Gilmanton, Route 106

ADMINISTRATIVE ORDER
WD 2001- 16
April 18 , 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Alphonse O. Plourde, pursuant to RSA 482-A:6.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire having its principal offices at 6 Hazen Drive, Concord, NH
2. Alphonse O. Plourde is an individual having a mailing address of RR 1, Box 323, Gilmanton, NH 03237.

C. STATEMENT OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate the dredging, filling, and construction in surface waters of the state, shorelines of surface waters, and in wetlands. RSA 482-A:11 authorizes DES to adopt rules to implement the wetlands program. Pursuant to this authority, DES has adopted NH Admin. Rules Wt 100-700 ("Wetlands Rules").
2. RSA 482-A:14, III provides that the failure, neglect, or refusal to comply with RSA 482-A, the Wetlands Rules, or orders or permits issued under RSA 482-A shall be deemed violations of the chapter.
3. Alphonse O. Plourde is the owner of property located at Route 106 in Canterbury, NH, more particularly described on Town of Canterbury Map #42 as Lot#14 ("the Property"). The Property has frontage on Rocky Pond.
4. On June 14, 2000, DES personnel inspected the Property. The purpose of the inspection was to determine compliance with RSA 482-A and the Wetlands Rules.
5. The inspection revealed the following
 - a) Two retaining walls had been constructed on the Property, at or near the mean highwater mark of Rocky Pond.

- b) A boat ramp had been extended 17 linear feet lakeward of the mean high water mark of Rocky Pond on the Property and covered with asphalt.
 - c) A retaining wall had been constructed on a spit of land which extends approximately 10' x 40' lakeward of the mean high water mark of Rocky Pond on the Property.
 - d) Sand had been deposited on the bank of Rocky Pond on the Property.
 - e) A wood fence had been erected on the border between the Property and the abutting property on the south side of the Property. This fence is located entirely lakeward of the mean high water mark of Rocky Pond.
6. A review of DES records showed that no permit has been applied for or issued to Mr. Plourde for the walls, ramp extension, sand or fence.
7. On June 19, 2000, DES issued a Notice of Findings ("Notice") to Mr. Plourde. The Notice informed Mr. Plourde of the violations DES personnel discovered on the Property, and requested Mr. Plourde to apply for a permit to retain all permissible work and to submit a plan to remove the structures which are not permissible under DES statutes and rules.
8. On July 12, 2000, DES received a written reply from Mr. Plourde. Mr. Plourde contended that the work had either been done prior to DES obtaining jurisdiction over the waters of the state, or that DES personnel had previously visited the site and informed him that he did not need permits for the work.
9. In November, 1991, DES cited Mr. Plourde for dredging and filling 7,500 square feet of wetland for pond construction on property he owned on Schoolhouse Road in Columbia, NH
10. RSA 482-A:3, I states that..."No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in or adjacent to the waters of the state without a permit from [DES]."
11. Under RSA 482-A:4, II, "waters and adjacent areas" is defined as "wherever fresh water flows or stands...it shall apply to those portions of great ponds or lakes created by the raising of the water level of the same, whether by public or private structure, and to all surface waters of the state as defined in RSA 485-A:2 which contain fresh water..."
12. Under RSA 485-A:2, XIV, "Surface waters of the state" is defined as "streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial."
13. Under Wt 101.34, "fill" means rock, soil, gravel, sand or other such material that has been deposited or caused to be deposited by human activity.

14. Rocky Pond is a jurisdictional water under RSA 482-A.

D. DETERMINATION OF VIOLATIONS

1. Alphonse O. Plourde violated RSA 482-A:3, I, by constructing two retaining walls on the banks of Rocky Pond without a permit from DES.
2. Alphonse O. Plourde violated RSA 482-A:3, I, by extending a boat ramp 17 linear feet past the mean high water mark of Rocky Pond and covering it with asphalt without a permit from DES.
3. Alphonse O. Plourde violated RSA 482-A:3, I, by constructing a retaining wall on the spit of land which extends approximately 10'x 40' lakeward of the mean high water mark of Rocky Pond without a permit from DES.
4. Alphonse O. Plourde violated RSA 482-A:3, I, by depositing sand on the bank of Rocky Pond on the Property without a permit from DES.
5. Alphonse O. Plourde violated RSA 482-A:3, I, by constructing a fence between the Property and the abutting property, lakeward of the mean high water mark of Rocky Pond without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Alphonse O. Plourde as follows

1. Within 10 days of this Order, submit a copy of the executed contract with the environmental consultant to prepare and implement the shoreline restoration plan and to submit monitoring reports.
2. Within 30 days of this Order, submit a restoration plan to DES for review and approval. Have the restoration plan prepared by a professional engineer, licensed land surveyor, or environmental consultant, and include provisions for restoration of the disturbed shoreline and lakebed on the Property. Submit the following with the restoration plan:
 - a) A plan with dimensions, drawn to scale showing:
 - 1) Delineation of the shoreline prior to installation of all illegal structures;
 - 2) Proposed conditions (at the original shoreline) reestablishing the shoreline and removing all of the unpermitted fill and structures;
 - b) A description of the proposed means of erosion control, such as silt fence, hay bales, etc;

- c) A description of the proposed planting plan for the stabilization and revegetation of the restoration area;
 - d) A description of the proposed construction sequence, equipment and methods for accomplishing restoration no later than June 15, 2001;
 - e) A description of the proposed monitoring plan, including two restoration progress assessment reports to be filed with DES.
3. Implement the removal, restoration, and plantings upon approval and as conditioned by DES.

F. APPEAL

Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if, in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.

Please note that RSA 482-A provides for civil and criminal penalties and administrative fines for violations noted in this Order, as well as for failure to comply with the Order.



COPY

Harry T. Stewart, P.E.
Director, Water Division



COPY

Robert W. Varney
Commissioner

CERTIFIED MAIL/RRR/#P

cc: DES Water Division - Director's Office
Gretchen Rule, Enforcement Coordinator - DES
Michael J. Walls, DOJ Environmental Protection Bureau
Charles Knox - PIP - DES
Belknap County Registry of Deeds
USEPA, New England
Board of Selectmen, Town of Gilmanton